

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSEPH CARUSO,

Petitioner,

vs.

JACK PALMER,

Respondent.

Case No. 3:09-CV-00151-RCJ-(VPC)

ORDER

Before the Court is Respondents' Motion to Dismiss (#22). Petitioner has not submitted a response, which the Court construes as consent to the granting of the Motion. LR 7-2(d). The Court concludes that Petitioner has not exhausted his available state-court remedies for the sole ground in the Second Amended Petition (#13), and the Court grants the motion.

Pursuant to a plea agreement, Petitioner was convicted of attempted lewdness with a child under the age of fourteen. Ex. 30 (#23-30). Petitioner did not appeal the judgment of conviction. Petitioner filed a post-conviction habeas corpus petition in the state district court. Ex. 32 (#23-32). According to the exhibits filed with the Motion to Dismiss (#22), that action is still pending in the state district court and it has not been appealed to the Nevada Supreme Court.

Before a federal court may consider a petition for a writ of habeas corpus, the petitioner must exhaust the remedies available in state court. 28 U.S.C. § 2254(b). To exhaust a ground for relief, a petitioner must fairly present that ground to the state's highest court, describing the operative facts and legal theory, and give that court the opportunity to address and resolve the

1 ground. See Duncan v. Henry, 513 U.S. 364, 365 (1995) (per curiam); Anderson v. Harless, 459
2 U.S. 4, 6 (1982).


3 Petitioner has not exhausted his sole ground for relief. He claims that his
4 granddaughter, whom he was convicted of attempting to molest, lied at the preliminary hearing.
5 Second Amended Petition, p. 3 (#13). He has presented a similar claim in his state-court petition.
6 Ex. 32, pp. 6A-6D (#23-32). Because the state courts have not ruled upon this claim, he has not
7 exhausted his available state-court remedies, as required by 28 U.S.C. § 2254(b).

8 Reasonable jurists would not disagree with the Court's conclusion, and the Court
9 denies a certificate of appealability.

10 IT IS THEREFORE ORDERED that Respondents' Motion to Dismiss (#22) is
11 **GRANTED**. This action is **DISMISSED** without prejudice for Petitioner's failure to exhaust his
12 state-court remedies. The Clerk of the Court shall enter judgment accordingly.

13 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

14 DATED: This 22nd day of February, 2010.

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17 ROBERT C. JONES
18 United States District Judge
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